

FILED BY CLERK

JUN 10 2010

COURT OF APPEALS
DIVISION TWO

IN THE COURT OF APPEALS
STATE OF ARIZONA
DIVISION TWO

THE STATE OF ARIZONA,)	2 CA-CR 2010-0033-PR
)	DEPARTMENT B
Respondent,)	
)	<u>MEMORANDUM DECISION</u>
v.)	Not for Publication
)	Rule 111, Rules of
JEFFREY LEE MITCHELL,)	the Supreme Court
)	
Petitioner.)	
_____)	

PETITION FOR REVIEW FROM THE SUPERIOR COURT OF PIMA COUNTY

Cause No. CR20080225

Honorable John S. Leonardo, Judge

REVIEW GRANTED; RELIEF DENIED

Terry Goddard, Arizona Attorney General
By Albert B. Lassen

Tucson
Attorneys for Respondent

Isabel G. Garcia, Pima County Legal Defender
By Joy Athena

Tucson
Attorneys for Petitioner

E C K E R S T R O M, Presiding Judge.

¶1 Petitioner Jeffrey Mitchell pled no contest to an amended charge of unlawful use of a power of attorney, a class six undesignated offense, for which he was

placed on two years' probation. In this petition for review, he challenges the trial court's summary dismissal of the petition for post-conviction relief he filed pursuant to Rule 32.1, Ariz. R. Crim. P. We will not disturb a trial court's ruling on a petition for post-conviction relief unless we find it clearly has abused its discretion. *State v. McCall*, 160 Ariz. 119, 129, 770 P.2d 1165, 1175 (1989).

¶2 Mitchell was charged by indictment with one count of theft and three counts of fraudulent scheme and artifice. The charges arose from various real estate transactions and investments the victim, S., had undertaken on Mitchell's advice between 2004 and 2006. At the time, Mitchell was a self-employed financial consultant and advisor; S. was a widow in her seventies. On the date his trial was scheduled to begin, Mitchell executed a plea agreement and pled no contest to the amended charge of unlawful use of a power of attorney. The amended charge alleged he had held a power of attorney from S. and, from February 2005 through October 2006, had "committed theft by using or managing assets or property"—specifically, "revenue from the real property located at 1608 Oak Shadows"—with the intent to deprive S. of that revenue unlawfully.

¶3 The trial court accepted and entered the plea, but Mitchell moved to withdraw it before he was sentenced. He contended the state had breached the terms of the plea agreement by "apparently falsely reporting" that he had been arrested and subsequently convicted of a "theft," which had resulted in his being "denied fingerprint clearance" when he applied for a job. The state opposed the motion to withdraw the plea, and the court denied the motion after first holding a hearing. At Mitchell's sentencing hearing in January 2009, the court then placed him on probation.

¶4 In the petition for post-conviction relief that followed, Mitchell again sought to withdraw his plea of no contest. He reiterated the assertions contained in his

earlier motion to withdraw the plea and added the further claim that his plea had been neither fully informed nor voluntary because his lawyer had explained the plea to him incorrectly.

¶5 In particular, Mitchell contended counsel had told him the charge was a misdemeanor and never had told him he would be pleading to a theft offense. Mitchell argued he should be allowed to withdraw his plea to avoid a manifest injustice and rectify the denial of due process that had occurred when he pled based on defense counsel's erroneous advice. In the alternative, Mitchell also contended there had been an insufficient factual basis for his plea, he was actually innocent of the offense, and his plea was the product of counsel's ineffective assistance.

¶6 In a detailed minute entry ruling, the trial court thoroughly addressed Mitchell's contentions, explaining in depth its findings that Mitchell knowingly and voluntarily had pled to an undesignated, class six felony theft offense; that there had been an adequate factual basis for the plea; and that no prejudice had resulted from defense counsel's alleged ineffective assistance. The written plea agreement, the reporter's transcript of the change-of-plea hearing, and the record as a whole support the court's ruling. And, by finding that a sufficient factual basis supported Mitchell's plea of no contest to the charge of committing theft by using the victim's power of attorney unlawfully, the court implicitly rejected Mitchell's claim of actual innocence.

¶7 We are satisfied with the trial court's identification, analysis, and resolution of Mitchell's claims and see no need to restate or embellish its ruling. *See State v. Whipple*, 177 Ariz. 272, 274, 866 P.2d 1358, 1360 (App. 1993) (when trial court has correctly identified and ruled on issues raised "in a fashion that will allow any court in the future to understand the resolution[, n]o useful purpose would be served by this

court[']s rehashing the trial court's correct ruling in a written decision"). On review, Mitchell primarily reasserts the arguments he made below, which are heavily fact-dependent. In large measure, the petition for review is a request that we reweigh evidence in the record, which this court does not do. *Cf. State v. Lee*, 189 Ariz. 590, 603, 944 P.2d 1204, 1217 (1997) (noting court does not reweigh evidence on appeal); *State v. Sasak*, 178 Ariz. 182, 186, 871 P.2d 729, 733 (App. 1993) (reviewing findings after post-conviction evidentiary hearing for clear error; findings upheld if supported by substantial evidence). Having presided over Mitchell's change of plea and having conducted the evidentiary hearing on his motion to withdraw that plea, the court was well equipped to evaluate Mitchell's post-conviction claims, and we defer to its assessment of the factual assertions underlying those claims.

¶8 We find no abuse of the trial court's discretion in summarily dismissing Mitchell's petition for post-conviction relief pursuant to Rule 32.6(c). Therefore, although we grant the petition for review, we deny relief.

/s/ Peter J. Eckerstrom

PETER J. ECKERSTROM, Presiding Judge

CONCURRING:

/s/ J. William Brammer, Jr.

J. WILLIAM BRAMMER, JR., Judge

/s/ Garye L. Vásquez

GARYE L. VÁSQUEZ, Judge